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7 *Attorney for Defendant Safeway Inc.*

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9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN FRANCISCO DIVISION**

13 **SHAWN RILEY, individually and on behalf )**  
14 **of all others similarly situated, )**

15 **Plaintiff, )**

16 **v. )**

17 **SAFEWAY INC., )**

18 **Defendant. )**  
19 \_\_\_\_\_ )

**No. 07-cv-06174-JCS**

**DEFENDANT SAFEWAY  
INC.'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S CLASS ACTION  
COMPLAINT**

Judge: Hon. Joseph C. Spero  
Action Filed: December 5, 2007  
Trial Date: None Set

1 Defendant Safeway Inc. (“Safeway” or “Defendant”), by its counsel, as its  
2 Answer and Affirmative Defenses to the Class Action Complaint of Plaintiff Shawn Riley  
3 (“Plaintiff”), states as follows:

4 1. This class action and representative action seeks relief on behalf of Plaintiff and  
5 the members of the Class for injuries sustained by them as a result of Safeway’s deceptive  
6 marketing of milk as organic when the milk is not, in fact, organic and Safeway’s increase in  
7 gross sales and sales price.

8 **ANSWER:**

9 Safeway admits that Plaintiff purports to seek relief on behalf of a proposed class  
10 for Safeway’s allegedly “deceptive” marketing and sale of organic milk. Safeway denies that it  
11 deceptively marketed or sold any of its organic milk. Safeway further denies that class  
12 certification is appropriate and expressly denies that any claims in this action are appropriate for  
13 class treatment. Safeway denies that Plaintiff, or anyone else, is entitled to any relief  
14 whatsoever, including, but not limited to, the relief requested in Plaintiff’s Complaint. By way  
15 of further response, Safeway affirmatively states that it purchases its organic milk from dairies  
16 whose products and operations are certified “USDA Organic” by one or more United States  
17 Department of Agriculture (“USDA”) accredited certifying agents, pursuant to the authority  
18 vested in those agents by the USDA under the Organic Foods Production Act of 1990 (“OFPA”) and the National Organic Program (“NOP”). Except as expressly admitted, Safeway denies the  
19 remaining allegations in Paragraph 1.  
20

21 2. During the Class Period, Defendant, which is one of the largest food and drug  
22 retailers in North America, violated its duty to inform customers that the “O”-label organic milk  
23 is not organic. Defendant’s nondisclosure of this material fact constitutes misrepresentation,  
24 unfair, unlawful, fraudulent, and/or deceptive business practices in violation of California’s  
25 consumer protection laws. The materiality of this information is proven directly by federal and  
26 state regulations which, at all relevant times, required Defendant to inform consumers that milk  
27 that [sic] were purchasing was not organic. Defendant flagrantly violated and, in some cases,  
28 continue [sic] to violate these regulations.

1 **ANSWER:**

2 Safeway denies the allegations in Paragraph 2 and expressly denies committing  
3 any misrepresentations or any “unfair, unlawful, fraudulent and/or deceptive business practices”  
4 in California or anywhere else. Safeway further denies that class certification is appropriate and  
5 expressly denies that any claims in this action are appropriate for class treatment. By way of  
6 further response, Safeway affirmatively states that it purchases its organic milk from dairies  
7 whose products and operations are certified “USDA Organic” by one or more USDA-accredited  
8 certifying agents, pursuant to the authority vested in those agents by the USDA under the OFPA  
9 and the NOP.

10 3. As a result of Defendant’s misbranding, concealment and nondisclosure,  
11 customers are misled to purchase the organic milk and/or to pay a greater price than they would  
12 otherwise pay. Defendant has been unjustly enriched at the expense of these consumers.

13 **ANSWER:**

14 Safeway denies the allegations in Paragraph 3 and expressly denies that it  
15 engaged in any “misbranding, concealment and nondisclosure” of its organic milk.

16 4. This is a class action and a representative action brought by Plaintiff, who  
17 purchased organic milk from, produced or distributed by Defendant in the State of California  
18 during the Class Period.

19 **ANSWER:**

20 Safeway admits that Plaintiff purports to bring a class action and a representative  
21 action on behalf of those “who purchased organic milk from, produced or distributed by Safeway  
22 in California” during a defined “Class Period.” Safeway denies that class certification is  
23 appropriate and expressly denies that any claims in this action are appropriate for class treatment.  
24 Safeway further denies that it produces any of the organic milk its sells. Except as expressly  
25 admitted, Safeway denies the remaining allegations in Paragraph 4.

26 5. The United States District Court for the Northern District of California has  
27 diversity jurisdiction over this Class Action lawsuit pursuant to 28 U.S.C. § 1332 as amended by  
28 the Class Action Fairness Act of 2005, because, upon information and belief, the amount in

1 controversy exceeds \$5,000,000, exclusive of interest and costs, and this lawsuit is a Class  
2 Action in which some members of the Plaintiff Class are citizens of states different than  
3 Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

4 **ANSWER:**

5 Safeway admits that Plaintiff purports to assert jurisdiction pursuant to 28 U.S.C.  
6 § 1332 as amended by the Class Action Fairness Act of 2005. Safeway further admits that the  
7 amount in controversy exceeds \$5,000,000 and that jurisdiction would appear to exist under 28  
8 U.S.C. § 1332(d)(2)(A). Except as expressly admitted, Safeway denies the remaining allegations  
9 in Paragraph 5.

10 6. Safeway Inc. (“Safeway”) is a Delaware corporation with its headquarters and  
11 principal place of business in Pleasanton, California. Considering that Plaintiff is a resident of  
12 Illinois, there is minimal diversity amongst the parties.

13 **ANSWER:**

14 Safeway admits that it is a Delaware corporation with its headquarters and  
15 principal place of business in Pleasanton, California. Safeway is without knowledge or  
16 information sufficient to form a belief as to the truth or falsity of the allegations contained in  
17 Paragraph 6 regarding the residency of Plaintiff and, on that basis, denies them. Except as  
18 expressly admitted, Safeway denies the remaining allegations in Paragraph 6.

19 7. Venue in this judicial district is proper under 28 U.S.C. §1391 because a  
20 substantial part of the events or omissions giving rise to the claims herein described occurred  
21 within this judicial district.

22 **ANSWER:**

23 Safeway admits that Plaintiff purports to assert that venue is proper under 28  
24 U.S.C. § 1391. Safeway denies that any “events or omissions giving rise to the claims herein  
25 described” occurred in this judicial district or anywhere else. Except as expressly admitted,  
26 Safeway denies the remaining allegations in Paragraph 7.

27 8. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of  
28 this Court is appropriate because Defendant’s headquarters and principal place of business is in

1 Pleasanton, California. Because this action arises in the county of Alameda, pursuant to  
2 Northern District of California, Local Rule 3-2(d), assignment to either the San Francisco  
3 Division or the Oakland Division is proper.

4 **ANSWER:**

5           Safeway admits that its headquarters and principal place of business are in  
6 Pleasanton, California. The remaining allegations in Paragraph 8 are legal conclusions for which  
7 no response is required. Except as expressly admitted, Safeway denies the remaining allegations  
8 in Paragraph 8.

9           9. Plaintiff Shawn Riley is a resident of Cook County, Illinois and a citizen of the  
10 State of Illinois. Plaintiff purchased the store-brand organic milk from Defendant Safeway at its  
11 Dominick's stores in the Chicago-area on numerous occasions throughout the class period. This  
12 milk was produced by Aurora Dairy Corp. and branded as a private label brand by Safeway.  
13 Plaintiff utilized the organic milk produced and sold by Defendant for his own and his family's  
14 own consumption. Plaintiff decided to purchase "organic" milk, and indeed paid a premium  
15 price for that "organic" milk, because he believed that it contained fewer additives and was  
16 healthier for their consumption than non-organic milk.

17 **ANSWER:**

18           Safeway admits that some, but not all, of the organic milk that it sells is supplied  
19 by Aurora Dairy Corporation ("Aurora"). Safeway is without knowledge or information  
20 sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 9  
21 regarding Plaintiff, his purchasing decisions and his use of organic milk and, on that basis, denies  
22 them. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 9.

23           10. Safeway is a Delaware corporation with its principal place of business in  
24 Pleasanton, California. Safeway is one of the largest food and drug retailers in North America.  
25 As of September 8, 2007, the company operated 1,738 stores in the Western, Southwestern,  
26 Rocky Mountain, and Mid-Atlantic regions of the United States and in western Canada.

1 **ANSWER:**

2 Safeway admits the allegations in Paragraph 10.

3 11. Safeway sold its “organic” milk to Plaintiff and the Class under its store “O”  
4 brand. The “organic” milk was contained in cartons that specifically represented that the milk  
5 was certified organic milk, despite the fact that it was not organic. Aurora labels its purportedly  
6 organic milk with an organic certified label. This label is supposed to assure consumers that  
7 Aurora’s milk complies with the Organic Foods Production Act of 1990 (7 U.S.C. § 6501, *et*  
8 *seq.*) and its implementing regulations (7 C.F.R. Part 205). Plaintiff and the Class Members they  
9 represent pay premium prices for Safeway’s “organic” milk.

10 **ANSWER:**

11 The OFPA (7 U.S.C. 6501, *et seq.*) and the NOP regulations (7 C.F.R. Part 205, *et*  
12 *seq.*) speak for themselves, and to the extent that the allegations in Paragraph 11 vary therewith,  
13 Safeway denies those allegations. The “cartons” referred to in Paragraph 11 further speak for  
14 themselves, and to the extent that the allegations in Paragraph 11 vary therewith, Safeway denies  
15 those allegations. Safeway admits that some, but not all, of the organic milk it sells is supplied  
16 by Aurora. Safeway further admits that Aurora represents that its milk is “USDA Organic”  
17 because it is, and has been at all times relevant hereto, certified organic by two certifying agents  
18 -- the Colorado Department of Agriculture (“CDA”) and Quality Assurance International  
19 (“QAI”) -- acting pursuant to the authority vested in them by the USDA under the OFPA and the  
20 NOP. Safeway is without knowledge or information sufficient to form a belief as to the truth or  
21 falsity of the allegations contained in Paragraph 11 regarding Plaintiff and, on that basis, denies  
22 them. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 11  
23 and expressly denies that class treatment is appropriate.

24 12. Safeway is and has been selling milk or milk products that it represents to be  
25 “organic,” when, in fact, the milk is not organic throughout the time period of December 5, 2003  
26 through October 15, 2007 (“class period” or “relevant time period”). Safeway sells this milk to  
27 consumers directly using its own brand name “O.”  
28

**ANSWER:**

Safeway denies that it has sold “milk or milk products that it represents to be ‘organic’ when, in fact, the milk is not organic.” Safeway admits that it sells its organic milk with the label “USDA Organic” because it purchases its organic milk from dairies whose products and operations are certified “USDA Organic” by one or more USDA-accredited certifying agents, pursuant to the authority vested in those agents by the USDA under the OFPA and the NOP. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 12 and expressly denies that class treatment is appropriate.

13. The market for organic milk has boomed in recent years. According to the United States Department of Agriculture (“USDA”), total milk or milk products production in the United States in 2004 was 170 billion pounds. Fluid milk or milk products sales since 1975 have been steady at approximately \$11 billion per year. Currently, organic fluid milk or milk products sales represent about 18% of overall sales. In 2005, total organic dairy sales were approximately \$2 billion. The organic dairy sector is annually growing at an approximate rate of 16%.

**ANSWER:**

Safeway is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13 and, on that basis, denies them. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 13.

14. Consumers rely on manufacturers and sellers of milk or milk products to determine what milk is in fact organic. As Aurora Dairy, from which Safeway obtained the milk labeled under its “O” brand, expressly recognizes, “Organic certification is the public’s assurance that products have been grown and handled according to strict procedures without persistent toxic chemical inputs.”

<http://www.auroraorganic.com/aodweb/site/itemcontent.aspx?icategoryid=6>.

**ANSWER:**

The material from Aurora’s website speaks for itself, and to the extent that the allegations in Paragraph 14 vary therewith, Safeway denies those allegations. Safeway admits that some, but not all, of the organic milk it sells is supplied by Aurora. Safeway is without

1 knowledge or information sufficient to form a belief as to the truth or falsity of the allegations  
2 contained in Paragraph 14 regarding on what Plaintiff or others “rely” and, on that basis, denies  
3 them. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 14.

4 15. The USDA has set forth four requirements that must be satisfied for milk to be  
5 labeled as “USDA Organic”: (a) the milk must not come from cows that have been treated with  
6 Bovine Growth Hormone; (b) the milk must not come from cows that have been treated with  
7 antibiotics; (c) the milk producing cows must only eat feed that has been grown without  
8 pesticides; and (d) the milk must come from cows that have some “access to pasture.”

9 **ANSWER:**

10 The requirements for organic production detailed in the OFPA (7 U.S.C. 6501, et  
11 seq.) and the NOP regulations (7 C.F.R. Part 205, et seq.) speak for themselves, and to the extent  
12 that the allegations in Paragraph 15 vary therewith, Safeway denies those allegations. Except as  
13 expressly admitted, Safeway denies the remaining allegations in Paragraph 15.

14 16. In order to sell or label an agricultural product as organically produced, the  
15 product must be produced and handled in compliance with the Organic Foods Production Act of  
16 1990 (“OFPA”), *see* 7 U.S.C. 6505(a)(1)(A), and the USDA adopted regulations, *see* 7 C.F.R.  
17 Part 205, *et seq.*

18 **ANSWER:**

19 The requirements for organic production detailed in the OFPA (7 U.S.C. 6501, et  
20 seq.) and the NOP regulations (7 C.F.R. Part 205, et seq.) speak for themselves, and to the extent  
21 that the allegations in Paragraph 16 vary therewith, Safeway denies those allegations. Except as  
22 expressly admitted, Safeway denies the remaining allegations in Paragraph 16.

23 17. By marketing, selling, or otherwise representing that its milk was “organic,”  
24 Safeway represented that the milk abides by these laws and regulations and that the milk is  
25 “organic.”

26 **ANSWER:**

27 Safeway admits that it sells its organic milk with the label “USDA Organic”  
28 because it purchases its organic milk from dairies whose products and operations are certified

1 “USDA Organic” by one or more USDA-accredited certifying agents, pursuant to the authority  
 2 vested in those agents by the USDA under the OFPA and the NOP. Except as expressly  
 3 admitted, Safeway denies the remaining allegations in Paragraph 17.

4 18. Specifically, Safeway included labels on its “O” brand milk that stated, in whole  
 5 or in part, as follows:

6 **Description :**

Organic Fat Free Milk

7 **Ingredients :**

Organic Grade A Fat Free Milk, Vitamin A Palmitate, Vitamin D3.

8 **Product Attribute :**

Organic

Kosher

Fat Free

9 **Product Details :**

10 Ultra-Pasteurized Vitamins A & D added. USDA Organic. Grade  
 11 A: Ultra-Pasteurized: Homogenized. Organic from the Source.

12 There’s a lot that goes into a good glass of milk. It starts with the  
 13 land. Our daily pastures are environmentally friendly, maintained  
 14 with the use of recognized organic horticultural practices. The  
 15 dairy cows that produce O Organics Milk enjoy a healthy mix of  
 16 fresh air, plenty of exercise, clean drinking water and a wholesome  
 17 100% certified organic diet - and they are not given growth  
 18 hormones or treated with antibiotics. All of these practices support  
 19 sustainable farming, which is good for the environment, good for  
 the cows and good for the milk. That’s why our O Organics Milk  
 tastes like milk should, fresh and pure. To be certified organic,  
 dairy cows must be managed under organic livestock practices at  
 least one year before milking. Their feed must be grown on land  
 that has been under organic cultivation practices for a minimum of  
 three years. Certified Organic

20 **ANSWER:**

21 The labels referred to in Paragraph 18 speak for themselves, and to the extent that  
 22 the allegations in Paragraph 18 vary therewith, Safeway denies those allegations. Except as  
 23 expressly admitted, Safeway denies the remaining allegations in Paragraph 18.

24 19. On the carton of Safeway’s O Organics Milk is the following statement:

25 **ORGANICS**

26 *Organic from the Source*

27 There’s a lot that goes into a good glass of milk. It starts with the  
 28 land. Our dairy pastures are environmentally friendly, maintained  
 with the use of recognized organic horticultural practices. The  
 dairy cows that produce O Organics Milk enjoy a healthy mix of

1 fresh air, plenty of exercise, clean drinking water and a  
 2 wholesome, 100% certified organic diet – and they are not given  
 3 growth hormones or treated with antibiotics.

4  
 5 All of these practices support sustainable farming, which is good  
 6 for the environment, good for the cows and good for the milk.  
 7 That's why our O Organics Milk tastes like milk should – fresh  
 8 and pure.

9 The carton also states:

10 ORGANICS

11 organic

12 Fat Free Milk

13 Vitamins A & D Added

14 Grade A • Pasteurized • Homogenized [sic]

15 “To be certified organic, dairy cows, must be managed under organic  
 16 livestock practices at least on eyear [sic] before milking. Their feed must  
 17 be grown on land that has been under organic cultivation practices  
 18 for a minimum of three years.”

19 **ANSWER:**

20 The carton referred to in Paragraph 19 speaks for itself, and to the extent that the  
 21 allegations in Paragraph 19 vary therewith, Safeway denies those allegations. Except as  
 22 expressly admitted, Safeway denies the remaining allegations in Paragraph 19.

23 20. However, Safeway's milk was not organic according to Federal law. In fact,  
 24 Safeway's “organic” milk was produced in large scale factory farms and otherwise failed to  
 25 comport with Federal law and thus should not have been certified organic.

26 **ANSWER:**

27 Safeway denies its milk was not organic according to “Federal law.” “Federal  
 28 law” speaks for itself, and to the extent that the allegations in Paragraph 20 vary therewith,  
 Safeway denies those allegations. Except as expressly admitted, Safeway denies the remaining

1 allegations in Paragraph 20.

2 21. By marketing, selling, or otherwise representing that its milk was “organic,”  
3 Costco represented that the milk abides by the laws and regulations requiring certain conditions  
4 be met before the milk is labeled “organic.”

5 **ANSWER:**

6 Safeway is without knowledge or information sufficient to form a belief as to the  
7 truth or falsity of the allegations contained in Paragraph 21 regarding Costco and, on that basis,  
8 denies them. Except as expressly admitted, Safeway denies the remaining allegations in  
9 Paragraph 21.

10 22. Aurora was formed by the former owners of Horizon, who sold Horizon to Dean  
11 Foods. The sale left Aurora with thousands of milk cows. Aurora then started its Colorado  
12 operation which produces 10 million gallons of milk a year. It is in essence a factory-farm  
13 model, there is no opportunity for cows to graze, as depicted below:

14 [image]

15 **ANSWER:**

16 Safeway is without knowledge or information sufficient to form a belief as to the  
17 truth or falsity of the allegations concerning the formation of Aurora or of the “Colorado  
18 operation” contained in Paragraph 22 and, on that basis, denies them. By way of further  
19 response, Safeway affirmatively states that Aurora is, and has been at all times relevant hereto,  
20 certified organic by two certifying agents -- CDA and QAI -- acting pursuant to the authority  
21 vested in them by the USDA under the OFPA and the NOP. Except as expressly admitted,  
22 Safeway denies the remaining allegations in Paragraph 22.

23 23. Aurora’s primary business is selling milk for use in the private-label milk market  
24 for Safeway, Costco, Wild Oats and others.

25 **ANSWER:**

26 Safeway is without knowledge or information sufficient to form a belief as to the  
27 truth or falsity of the allegations concerning Aurora’s “primary business” in Paragraph 23 and,  
28 on that basis, denies them. Safeway admits that some, but not all, of the organic milk that it sells

1 is supplied by Aurora. Except as expressly admitted, Safeway denies the remaining allegations  
2 in Paragraph 23.

3 24. However, Aurora's milk was not organic according to Federal law. In fact,  
4 Aurora's "organic" milk was produced in large scale factory farms and otherwise failed to  
5 comport with Federal law.

6 **ANSWER:**

7 Safeway denies the allegations in Paragraph 24. By way of further response,  
8 Safeway affirmatively states that Aurora is, and has been at all times relevant hereto, certified  
9 organic by two certifying agents -- CDA and QAI -- acting pursuant to the authority vested in  
10 them by the USDA under the OFPA and the NOP.

11 25. On March 7, 2007, the USDA identified the following "violations by Aurora  
12 Organic Dairy," from which Safeway obtained the milk Safeway sold under its own labels, of  
13 federal law:

14 a. From 2003 through 2006, for dairy animals at its Platteville, Colorado  
15 facility, Aurora failed to provide a total feed ration that included pasture, failed to establish and  
16 maintain pasture conditions appropriate for minimizing the occurrence and spread of diseases  
17 and parasites, and failed to establish and maintain access to pasture, in willful violation of 7  
18 C.F.R. §§ 205.237(a), 205.238(a)(3), and 205.239(a)(2);

19 b. During the spring and early summer of 2006, Aurora entered conventional  
20 dairy animals into organic milk or milk products production at its Dublin, Texas facility before  
21 those animals completed the required one-year period of continuous organic management, in  
22 willful violation of 7 C.F.R. § 205.236(a)(2);

23 c. From 2003 through 2006, Aurora purchased for its Platteville facility,  
24 from Promiseland Livestock in Falcon, Missouri, dairy animals that had been converted from  
25 conventional to organic milk or milk products production, and thus had not been under  
26 continuous organic management from at least the last third of gestation, in willful violation of 7  
27 C.F.R. § 205.236(a)(2)(iii);

28 d. From on or about July 10, 2004 through on or about September 28, 2005,

1 Aurora moved organic dairy animals from its certified Platteville facility to Wells Ranch in Gill,  
2 Colorado, a non-organic (non-certified) livestock operation for management, and thereafter  
3 returned them to the Platteville facility for organic dairy production, in willful violation of 7  
4 C.F.R. § 205.236(b)(1);

5 e. From February 2005 through March 2006, Aurora moved organic calves  
6 from its certified Platteville facility to non-organic (non-certified) livestock operations for  
7 management, and eventually returned them to the Platteville facility for organic dairy production,  
8 in willful violation of 7 C.F.R. §§ 205.236(a)(2)(iii) and 205.236(b)(1);

9 f. From 2003 through 2006, Aurora used non-organic agricultural products,  
10 such as wheat straw and corn stalks, as bedding for organic dairy animals at its Platteville  
11 facility, in willful violation of 7 C.F.R. § 205.239(a)(3);

12 g. From on or about July 27, 2004 through on or about September 30, 2005,  
13 Aurora routinely caused organic dairy animals from Promiseland Livestock, a certified organic  
14 dairy, to be delivered to Wells Ranch, a non-organic livestock operation, for livestock  
15 management, before having them delivered to Aurora's Platteville facility for organic dairy  
16 production, in willful violation of 7 C.F.R. § 205.236(b)(1);

17 h. From December 5, 2003 through at least September 7, 2007, Aurora sold,  
18 labeled and represented its milk or milk products as being organically produced when such milk  
19 or milk products were not produced and handled in accordance with the National Organic  
20 Program regulations, in willful violation of 7 C.F.R. §§ 205.102, 205.200 and 205.400(a);

21 i. From on or about October 29, 2003 through on or about March 9, 2006,  
22 Aurora failed to notify its certifying agent immediately concerning changes to the operation of its  
23 Platteville facility regarding the termination an utilization of off-site facilities, such as Wells  
24 Ranch, contracted by Aurora to provide pasture and/or livestock management services, in willful  
25 violation of 7 C.F.R. § 205.400(f)(2);

26 j. Aurora failed to include a summary statement, supported by  
27 documentation, in the December 29, 2004 and December 28, 2005 Organic System Plans for its  
28 Platteville facility that detailed changes to the previous year's Organic System Plan regarding the

1 termination and utilization of off-site facilities, such as Wells Ranch, contracted by Aurora to  
2 provide pasture and/or livestock management services, in willful violation of 7 C.F.R. §  
3 205.406(a)(1)(i);

4 k. From 2004 through 2006, Aurora failed to maintain adequate records that  
5 disclosed all activities and transaction in sufficient detail as to be readily understood and audited  
6 to demonstrate compliance with the OFPA and the National Organic Program regulations  
7 concerning pasture arrangements with operations identified by Aurora in its annual Organic  
8 System Plan for its Platteville facility, in willful violation of 7 C.F.R. § 205.103(b);

9 l. In the October 29, 2003 and December 29, 2004 Organic System Plans for  
10 its Platteville facility, Aurora failed to include a full description of the practices and procedures  
11 to be performed by Wells Ranch, in willful violation of 7 C.F.R. § 205.201(a)(1);

12 m. In the December 28, 2005 Organic System Plan for its Platteville facility,  
13 Aurora failed to include a full description of the practices and procedures to be performed by  
14 Matsude Farms, Salazar, Cockroft Dairy Farm, and Ray-Glo Dairy, as at its Woodward facility,  
15 in willful violation of 7 C.F.R. § 205.201(a)(1); and

16 n. In the October 29, 2003, December 29, 2004, and December 28, 2005  
17 Organic System Plans for its Platteville facility, Aurora failed to include a full description of the  
18 monitoring practices and procedures to be performed and maintained to verify that its Organic  
19 System Plans were effectively implemented with respect to off-site operations contracted by  
20 Aurora to provide pasture and/or livestock management services, in willful violation of 7 C.F.R.  
21 § 205.201(a)(3).

22 **ANSWER:**

23 Safeway does not answer for Aurora, who has not been named in this action.  
24 Safeway denies the allegations in Paragraph 25.

25 26. On August 23, 2007, Aurora entered into a Consent Agreement with the USDA.  
26 This Consent Agreement contained a stipulation for probation. The USDA found that Aurora  
27 had not been in compliance with the federal organic food regulations, and placed it on a one year  
28 probationary period. The Consent Agreement provided that Aurora was required to remove

1 organic dairy animals “currently present at Platteville that transitioned under the 80/20’ rule”  
 2 from the plant, and instructed that such animals could only be utilized as conventional animals,  
 3 not certified organic animals. Finally, the Consent Agreement also requires Aurora to address all  
 4 issues that were raised in the Notice of Proposed Revocation in order for its organic certification  
 5 not to be revoked.

6 **ANSWER:**

7           Safeway does not answer for Aurora, who has not been named in this action. The  
 8 Consent Agreement speaks for itself, and to the extent that the allegations in Paragraph 26 vary  
 9 therewith, Safeway denies those allegations. Except as expressly admitted, Safeway denies the  
 10 remaining allegations in Paragraph 26.

11           27. Safeway violated, and continues to violate federal and state law (including the  
 12 applicable regulations by selling its milk as “organic.” By mislabeling the milk, Safeway has  
 13 misled, and continues to mislead Plaintiff and the Class Members into paying a higher price for  
 14 milk that cannot be sold as “organic.”

15 **ANSWER:**

16           Safeway denies the allegations in Paragraph 27 and expressly denies that class  
 17 treatment is appropriate.

18           28. The milk that Safeway sold was not organic, despite Defendant’s  
 19 misrepresentations that the milk was, in fact, organic; in that Aurora and thus Safeway had failed  
 20 to comply with the requirements of the OFPA. *See* 7 C.F.R. § 205.102, *et seq.*, in at least the  
 21 following ways:

22           a. Safeway represented its milk or milk products as “organic” when, in fact,  
 23 they were not, in willful violation of 7 C.F.R. § 205.102;

24           b. Aurora failed to maintain records concerning the production and handling  
 25 of milk or milk products intended to be sold, labeled, or represented as “organic” in a manner  
 26 which fully disclosed all activities and transactions of the certified operation in sufficient detail  
 27 as to be readily understood and audited, in willful violation of 7 C.F.R. § 205.103(b);

28           c. Aurora failed to provide its dairy cows with access to land used for

1 livestock grazing that it managed to provide feed value as required by 7 C.F.R. §205.200;

2 d. Aurora, intending to sell, label or represent milk or milk products as  
3 “organic,” failed to comply with the applicable provisions of 7 C.F.R. § 205.200;

4 e. Aurora failed to maintain an accurate organic production or handling  
5 system that includes a description of practices and procedures to be performed and maintained,  
6 including the frequency with which they will be performed, in willful violation of 7 C.F.R.  
7 §205.201(a)(1);

8 f. Aurora failed to maintain an accurate organic production or handling  
9 system that included a description of the monitoring practices and procedures to be performed  
10 and maintained, including the frequency with which they will be performed, to verify that the  
11 plan is effectively implemented, in willful violation of 7 C.F.R. § 205.201(a)(3);

12 g. Aurora, after an entire, distinct herd had been converted to organic  
13 production, failed to maintain all cows under organic management from the last third of  
14 gestation, in willful violation of 7 C.F.R. §205.236(a)(2)(iii);

15 h. Aurora removed its dairy cows from an organic operation and  
16 subsequently managed those cows on a non-organic (non-certified) operation before being sold,  
17 labeled, or represented as organically produced, in willful violation of 7 C.F.R. § 206.236(b)(1);

18 i. Aurora failed to provide its dairy cows with a total feed ration composed of  
19 agricultural products, including pasture and forage, that are organically produced and, where  
20 applicable, organically handled, in willful violation of 7 C.F.R. 205.238(a)(3);

21 j. Aurora failed to establish and maintain living conditions for its dairy cows  
22 which accommodate their health and natural behavior, in willful violation of 7 C.F.R. §  
23 205.239(a);

24 k. Aurora failed to establish appropriate housing, pasture conditions, and  
25 sanitation practices for its dairy cows to minimize the occurrence and spread of diseases and  
26 parasites, in willful violation of 7 C.F.R. § 205.238(a)(3);

27 l. Aurora failed to provide its dairy cows with suitable access to the  
28 outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight in willful violation of 7

1 C.F.R. § 205.239(a)(1);

2 m. Aurora failed to provide its dairy cows with access to pasture in willful  
3 violation of 7 C.F.R. § 205.239(a)(2);

4 n. Aurora failed to provide its dairy cows with appropriate clean, dry  
5 bedding, which complies with the feed requirements of § 205.237, in willful violation of 7  
6 C.F.R. § 205.239(a)(3);

7 o. Aurora failed to provide shelter designed to allow for its dairy cows'  
8 natural maintenance, comfort behaviors, and the opportunity to exercise, as required by federal  
9 regulation;

10 p. Aurora failed to comply with the Organic Food Production Act of 1990  
11 and applicable organic production and handling regulations of 7 C.F.R. § 205.400(a);

12 q. Aurora failed to immediately notify its certifying agent concerning the  
13 application of a prohibited substance to its dairy cows, in willful violation of 7 C.F.R.  
14 § 205.400(f)(2); and

15 r. Aurora failed to submit to its certifying agent an updated organic  
16 production or handling system plan that included a summary statement, supported by  
17 documentation, detailing deviations from, changes to, modifications to, or other amendments  
18 made to the previous year's organic system plan during the previous year in willful violation of 7  
19 C.F.R. § 205.406(a)(1)(i).

20 **ANSWER:**

21 Safeway does not answer for Aurora, who has not been named in this action.  
22 Safeway denies the allegations in Paragraph 28.

23 29. Defendant Safeway failed to conduct its own inspections and oversight to  
24 determine whether Aurora was complying with the laws and/or ignored Aurora's flagrant  
25 violations. Its representations about cows having a "healthy mix of fresh air, plenty of exercise,"  
26 were blatantly false. Thus, despite the violations of federal law and regulations, Safeway  
27 marketed and sold the milk or milk products under the "O" brand representing that the milk was  
28 organic, when it was not. Defendant's conduct deceived Plaintiff and the Class Members into

1 believing that they were purchasing organic milk when they were not.

2 **ANSWER:**

3           Safeway admits that it markets and sells its organic milk with the label “USDA  
4 Organic” because it purchases its organic milk from dairies whose products and operations are  
5 certified “USDA Organic” by one or more USDA-accredited certifying agents, pursuant to the  
6 authority vested in those agents by the USDA under the OFPA and the NOP. By way of further  
7 response, Safeway affirmatively states that some, but not all, of the organic milk it sells is  
8 supplied by Aurora. Except as expressly admitted, Safeway denies the remaining allegations in  
9 Paragraph 29 and expressly denies that class treatment is appropriate.

10           30. Thus, Safeway directly misrepresented to Plaintiff and the Class Members that the  
11 “organic” milk it sold under its own label was certified organic, when it was not. Again, Plaintiff  
12 and the Class Members would not have purchased Safeway’s milk, and paid the premium for  
13 Safeway’s milk had they known that Safeway’s milk was, in fact non-organic.

14 **ANSWER:**

15           Safeway denies making any misrepresentations whatsoever regarding the  
16 certification of its organic milk to Plaintiff or anyone else. Safeway is without knowledge or  
17 information sufficient to form a belief as to the truth or falsity of the allegations contained in the  
18 second sentence of Paragraph 30 and, on that basis, denies them. By way of further response,  
19 Safeway affirmatively states that it sells its organic milk with the label “USDA Organic” because  
20 it purchases its organic milk from dairies whose products and operations are certified “USDA  
21 Organic” by one or more USDA-accredited certifying agents, pursuant to the authority vested in  
22 those agents by the USDA under the OFPA and the NOP. Except as expressly admitted,  
23 Safeway denies the remaining allegations in Paragraph 30 and expressly denies that class  
24 treatment is appropriate.

25           31. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks  
26 certification of a national Consumer Class (with the designation of statewide subclasses if the  
27 Court deems necessary and appropriate) defined as follows:

28           All persons in the United States who purchased organic milk or

1 milk products from Safeway.

2 Should this court determine that a national Consumer Class would not satisfy the applicable  
3 requisites for class certification, Plaintiff alternatively seeks certification of a statewide class,  
4 defined as:

5 All consumer residents and/or domiciliaries of California who  
6 purchased organic milk or milk products from Safeway.

7 **ANSWER:**

8 Safeway admits that Plaintiff purports to seek certification of a “national  
9 Consumer Class” pursuant to Rule 23 of the Federal Rules of Civil Procedure. Safeway further  
10 admits that Plaintiff alternatively purports to seek certification of a California statewide class.  
11 Safeway denies that class certification of any kind is appropriate and expressly denies that any  
12 claims in this action are appropriate for class treatment. Safeway further denies the  
13 appropriateness of the definitions and descriptions of the proposed classes. Except as expressly  
14 admitted, Safeway denies the remaining allegations in Paragraph 31.

15 32. Plaintiff is informed and believes that the Class consists of many thousands of  
16 persons throughout the United States, making individual joinder of all Class Members  
17 impracticable.

18 **ANSWER:**

19 Safeway denies the allegations in Paragraph 32 and expressly denies that class  
20 treatment is appropriate.

21 33. Questions of law and fact are common to the Plaintiff Class and predominate over  
22 questions affecting only individual member, including, *inter alia*, the following:

23 a. Whether the alleged conduct by Defendant violated laws as alleged in this  
24 Complaint;

25 b. Whether Defendant engaged in unfair, unlawful and/or fraudulent business  
26 practices by failing to disclose that the milk labeled as organic milk was not organic;

27 c. Whether Defendant violated federal and/or state regulations by failing to  
28 disclose that the milk labeled as organic milk was not organic;

1 d. Whether Plaintiff and the members of the Class were unconscionably  
2 induced into purchasing organic milk without adequate disclosures that the milk was not organic;

3 e. Whether Defendant violated California law, including the Unfair  
4 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, §§ 17500, *et seq.*, and/or  
5 California’s Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*;

6 f. Whether Defendant made misrepresentations to Plaintiff and the members  
7 of the Class about milk labeled as organic;

8 g. Whether Plaintiff and the members of the Class are entitled to equitable  
9 and/or injunctive relief;

10 h. Whether Defendant’s unlawful, unfair and/or deceptive practices harmed  
11 Plaintiff and the members of the Class; and

12 i. Whether Defendant was unjustly enriched by its deceptive practices.

13 **ANSWER:**

14 Safeway denies the allegations in Paragraph 33 and expressly denies that class  
15 treatment is appropriate.

16 34. Plaintiffs [sic] claims are typical of the claims of the Class Members as described  
17 above; the claims arise from the same course of conduct by Safeway and the relief sought is  
18 common.

19 **ANSWER:**

20 Safeway denies the allegations in Paragraph 34 and expressly denies that class  
21 treatment is appropriate.

22 35. Plaintiff will fairly and adequately represent and protect the interests of all Class  
23 Members. Plaintiff is represented by counsel competent and experienced in both consumer  
24 protection and class action litigation.

25 **ANSWER:**

26 Safeway is without knowledge or information sufficient to form a belief as to the  
27 truth or falsity of the allegations contained in Paragraph 35 regarding Plaintiff and his counsel  
28 and, on that basis, denies them. Except as expressly admitted, Safeway denies the remaining

1 allegations in Paragraph 35 and expressly denies that class treatment is appropriate.

2       36. Class certification is proper under Fed. R. Civ. P. 23(b)(1)(A), because the  
3 prosecution of separate actions by individual Class Members would create a risk of inconsistent  
4 or varying adjudications with respect to individual Class Members and potentially establish  
5 incompatible standards of conduct for Defendant.

6 **ANSWER:**

7       Safeway denies the allegations in Paragraph 36 and expressly denies that class  
8 treatment is appropriate.

9       37. Class certification is proper under Fed. R. Civ. P. 23(b)(1)(B) because the  
10 prosecution of separate actions by individual Class Members would create a risk of adjudications  
11 with respect to individual Class Members which would, as a practical matter, be dispositive of  
12 the interest of the other members not parties to these adjudications and/or substantially impair  
13 their ability to protect these interests.

14 **ANSWER:**

15       Safeway denies the allegations in Paragraph 37 and expressly denies that class  
16 treatment is appropriate.

17       38. Class certification is proper under Fed. R. Civ. P. 23(b)(3), because common issue  
18 of law and fact predominate over any questions affecting only individual members of the Class,  
19 and a class action is superior to other available methods for the fair and efficient adjudication of  
20 this controversy.

21 **ANSWER:**

22       Safeway denies the allegations in Paragraph 38 and expressly denies that class  
23 treatment is appropriate.

24       39. A class action is superior to other methods for the fair and efficient adjudication  
25 of this controversy, since joinder of all members is impracticable. Furthermore, because the  
26 economic damages suffered by the individual Class Members may be relatively modest, albeit  
27 significant, compared to the expense and burden of individual litigation, it would be  
28 impracticable for Class Members to seek redress individually for the wrongful conduct alleged

herein. There will be no difficulty in the management of this litigation as a class action.

**ANSWER:**

Safeway denies the allegations in Paragraph 39 and expressly denies that class treatment is appropriate.

**FIRST CAUSE OF ACTION**  
**(California's Business & Professions Code §§ 17200, *et seq.*)**

40. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of California's UCL, Bus. & Prof. Code §§ 17200, *et seq.*, on behalf of himself and the members of the Class.

**ANSWER:**

Safeway repeats and realleges its answers to the preceding paragraphs as if fully set forth herein. Safeway admits that Plaintiff purports to assert this claim under California's Business and Professions Code §§ 17200, *et seq.* on behalf of himself and the members of a proposed class. California's Business and Professions Code §§ 17200, *et seq.* speaks for itself, and to the extent that the allegations in Paragraph 40 vary therewith, Safeway denies those allegations. Safeway expressly denies that it has committed any violations of the California Business and Professions Code. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 40 and expressly denies that class treatment is appropriate.

41. Defendant's statements and representations constitute "unfair" trade practices that have the capacity to and do deceive consumers, in violation of the UCL.

**ANSWER:**

The UCL speaks for itself, and to the extent that the allegations in Paragraph 41 vary therewith, Safeway denies those allegations. Safeway expressly denies engaging in any "unfair" trade practices of any kind or deceiving consumers in California or anywhere else. Except as expressly admitted, Safeway denies the allegations in Paragraph 41.

42. All of the wrongful conduct alleged herein occurs and continues to occur in the conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct that is repeated in the State of California (and throughout the

United States) on thousands (if not tens of thousands) of occasions daily.

**ANSWER:**

Safeway denies the allegations in Paragraph 42 and expressly denies committing any “wrongful conduct” in the State of California or anywhere else.

43. As a proximate result of Defendant’s wrongful conduct, Plaintiff, and the members of the Class have sustained damages by paying a higher price for milk labeled as organic that was not organic.

**ANSWER:**

Safeway denies the allegations in Paragraph 43 and expressly denies that class treatment is appropriate.

44. Plaintiff requests that this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired by means of such unfair competition, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as set forth in the Prayer for Relief.

**ANSWER:**

California Business and Professions Code § 17203 and the California Civil Code § 3345 speak for themselves, and to the extent that the allegations in Paragraph 44 vary therewith, Safeway denies those allegations. Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff’s Complaint. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 44.

**SECOND CAUSE OF ACTION**  
**VIOLATIONS OF THE CLRA**  
**(Cal. Civ. Code §§ 1750, *et seq.*)**

45. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim for violations of the CLRA on behalf of himself and the members of the Class.

**ANSWER:**

Safeway repeats and realleges its answers to the preceding paragraphs as if fully

1 set forth herein. Safeway admits that Plaintiff purports to assert this claim under California Civil  
 2 Code §§ 1750, et seq. on behalf of himself and the members of a proposed class. California  
 3 Civil Code §§ 1750, et seq. speaks for itself, and to the extent that the allegations in Paragraph  
 4 45 vary therewith, Safeway denies those allegations. Safeway expressly denies that it has  
 5 committed any violations of the CLRA. Except as expressly admitted, Safeway denies the  
 6 remaining allegations in Paragraph 45 and expressly denies that class treatment is appropriate.

7 46. Plaintiff and the members of the Class are consumers who purchase goods (food  
 8 products) from Defendant for personal, family, or household purposes.

9 **ANSWER:**

10 Safeway is without knowledge or information sufficient to form a belief as to the  
 11 truth or falsity of the allegations contained in Paragraph 46 and, on that basis, denies them.  
 12 Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 46 and  
 13 expressly denies that class treatment is appropriate.

14 47. Representing that goods (including food products) have approval, characteristics,  
 15 uses, or benefits which they do not have and advertising goods with intent not to sell them as  
 16 advertised constitute unfair or deceptive trade practices under the provisions of the CLRA, Cal.  
 17 Civ. Code §§ 1770(a)(5), (9), (14) and (17).

18 **ANSWER:**

19 California Civil Code §§ 1770(a)(5), (9), (14) and (17) speak for themselves, and  
 20 to the extent that the allegations in Paragraph 47 vary therewith, Safeway denies those  
 21 allegations. Except as expressly admitted, Safeway denies the remaining allegations in  
 22 Paragraph 47.

23 48. Plaintiff and the members of the Class have all been directly and proximately  
 24 injured by Defendant's conduct, and such injury includes the purchase of milk labeled as  
 25 organic, but which was not organic, that they would not have purchased were they truthfully and  
 26 fully informed of material facts concerning the fact that the milk was not organic.

27 **ANSWER:**

28 Safeway denies that Plaintiff or anyone else has been injured by "the purchase of

1 milk labeled as organic” from Safeway and further denies that it has sold milk “labeled as  
 2 organic, but which was not organic.” Safeway is without knowledge or information sufficient to  
 3 form a belief as to the truth or falsity of the allegations concerning the purchasing decisions of  
 4 Plaintiff or anyone else contained in the second sentence of Paragraph 48 and, on that basis,  
 5 denies them. Except as expressly admitted, Safeway denies the remaining allegations in  
 6 Paragraph 48 and expressly denies that class treatment is appropriate.

7 49. Pursuant to Cal. Civ. Code § 1780(a), Plaintiff seeks an order enjoining  
 8 Defendant from engaging in the methods, acts, or practices alleged herein. Pursuant to Cal. Civ.  
 9 Code § 1782, if Defendant does not rectify its illegal acts within 30 days, Plaintiff intends to  
 10 amend this complaint to add claims for: a) actual damages; b) restitution of money to Plaintiff  
 11 and class members; c) punitive damages; d) attorneys’ fees and costs; and e) other relief that this  
 12 Court deems proper.

13 **ANSWER:**

14 Safeway admits that Plaintiff purports to seek, among other relief, an order  
 15 enjoining Safeway. Safeway denies that Plaintiff, or anyone else, is entitled to any relief  
 16 whatsoever, including, but not limited to, the relief requested in Plaintiff’s Complaint. Safeway  
 17 further denies that Plaintiff has complied with California Civil Code § 1782. Except as expressly  
 18 admitted, Safeway denies the remaining allegations in Paragraph 49 and expressly denies that  
 19 class treatment is appropriate.

20 **THIRD CAUSE OF ACTION**  
 21 **FALSE AND MISLEADING ADVERTISING**  
 22 **(Cal. Bus. & Prof. Code § 17500)**

23 50. The preceding paragraphs of this Complaint are realleged and incorporated by  
 24 reference. Plaintiff asserts this claim for violations of Cal. Bus. & Prof. Code § 17500 on behalf  
 25 of himself and the members of the Class.

26 **ANSWER:**

27 Safeway repeats and realleges its answers to the preceding paragraphs as if fully  
 28 set forth herein. Safeway admits that Plaintiff purports to assert this claim under California  
 Business and Professions Code §§ 17500, et seq. on behalf of himself and the members of a

1 proposed class. California Business and Professions Code §§ 17500, et seq. speaks for itself, and  
2 to the extent that the allegations in Paragraph 50 vary therewith, Safeway denies those  
3 allegations. Safeway expressly denies that it has committed any violations of the California  
4 Business and Professions Code. Except as expressly admitted, Safeway denies the remaining  
5 allegations in Paragraph 50 and expressly denies that class treatment is appropriate.

6 51. In violation of Section 17500, in connection with its sales of non-organic milk,  
7 Defendant made or disseminated statements which are untrue or misleading, and which  
8 Defendant knew (or by the exercise of reasonable care should have known) to be untrue or  
9 misleading.

10 **ANSWER:**

11 California Business and Professions Code § 17500 speaks for itself, and to the  
12 extent that the allegations in Paragraph 51 vary therewith, Safeway denies those allegations.  
13 Safeway denies making any “untrue or misleading” statements in California or anywhere else.  
14 By way of further response, Safeway affirmatively states that it sells its organic milk with the  
15 label “USDA Organic” because it purchases its organic milk from dairies whose products and  
16 operations are certified “USDA Organic” by one or more USDA-accredited certifying agents,  
17 pursuant to the authority vested in those agents by the USDA under the OFPA and the NOP.  
18 Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 51.

19 52. As a result of the violations of California law alleged herein, Defendant has been,  
20 and will be, unjustly enriched at the expense of Plaintiff, the members of the Class and the  
21 general public. Specifically, Defendant has been unjustly enriched by their receipt of monies  
22 from consumers who purchased milk labeled organic that was not organic which is advertised  
23 and/or otherwise marketed in this State, and is promoted and sold by Defendant through  
24 advertising and marketing materials containing the false and misleading statements alleged  
25 herein.

26 **ANSWER:**

27 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,  
28 including, but not limited to, the relief requested in Plaintiff’s Complaint. Except as expressly

1 admitted, Safeway denies the remaining allegations in Paragraph 52 and expressly denies that  
2 class treatment is appropriate.

3 53. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff requests that this Court  
4 enter such orders or judgments as may be necessary to restore to any person in interest any  
5 money which may have been acquired by means of such unfair competition, and for such other  
6 relief as set forth below.

7 **ANSWER:**

8 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,  
9 including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly  
10 admitted, Safeway denies the remaining allegations in Paragraph 53 and expressly denies that  
11 class treatment is appropriate.

12 **FOURTH CAUSE OF ACTION**  
13 **NEGLIGENT MISREPRESENTATION**

14 54. The preceding paragraphs of this Complaint are realleged and incorporated by  
15 reference. Plaintiff asserts this claim for negligent misrepresentation on behalf of himself and  
16 the members of the Class.

17 **ANSWER:**

18 Safeway repeats and realleges its answers to the preceding paragraphs as if fully  
19 set forth herein. Safeway admits that Plaintiff purports to assert this claim for negligent  
20 misrepresentation on behalf of himself and members of a proposed class. Except as expressly  
21 admitted, Safeway denies the remaining allegations in Paragraph 54 and expressly denies that  
22 class treatment is appropriate.

23 55. Defendant owed a duty to Plaintiff and members of the Class to exercise  
24 reasonable care [sic] in making representations about organic milk.

25 **ANSWER:**

26 The allegations in Paragraph 55 are legal conclusions for which no answer is  
27 required. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph  
28 55 and expressly denies that class treatment is appropriate.

56. These representations were negligently and recklessly made to potential customers and the general public through uniform misbranding, concealment and non-disclosure, through mass media and point-of-sale advertising, and through other information prepared or disseminated by Defendant. As a direct and proximate result of these misrepresentations, omissions and concealment, Plaintiff and the Class members have been damaged in and amount to be proven at trial.

**ANSWER:**

Safeway denies making any “negligent[] and reckless[]” statements to anyone in California or anywhere else. Safeway further denies that the Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff’s Complaint. By way of further response, Safeway affirmatively states that it sells its organic milk with the label “USDA Organic” because it purchases its organic milk from dairies whose products and operations are certified “USDA Organic” by one or more USDA-accredited certifying agents, pursuant to the authority vested in those agents by the USDA under the OFPA and the NOP. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 56 and expressly denies that class treatment is appropriate.

57. Defendant at all times knew that Plaintiff and the Class members relied (or should be presumed to have relied) upon the labeling and lack of labeling provided by Defendant, and the materiality of such labeling is established as a matter of state and federal Law [sic]. Defendant’s concealment, misbranding and non-disclosure were intended to influence consumers’ purchasing decisions and were done with reckless disregard for the rights of consumers. Plaintiff’s and Class members’ reliance was reasonably foreseeable by Defendant.

**ANSWER:**

Safeway denies that it engaged in any “concealment, misbranding and non-disclosure” whatsoever of its organic milk. The allegations in Paragraph 57 regarding “the materiality” of Safeway’s labeling are legal conclusions for which no answer is required. Safeway is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 57 regarding on what Plaintiff or others “relied” and,

on that basis, denies them. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 57 and expressly denies that class treatment is appropriate.

**FIFTH CAUSE OF ACTION (IN THE ALTERNATIVE)**  
**DEFENDANT'S VIOLATION OF STATE CONSUMER PROTECTION ACTS**

58. Plaintiff incorporates by reference the preceding paragraphs as if they were fully set forth herein.

**ANSWER:**

Safeway repeats and realleges its answers to the preceding paragraphs as if fully set forth herein.

59. Safeway had a statutory duty to refrain from unfair or deceptive acts or practices in the manufacture, promotion and sale of "organic" milk.

**ANSWER:**

The allegations in Paragraph 59 are legal conclusions for which no answer is required. Safeway denies committing any "unfair or deceptive acts or practices" whatsoever in the sale and promotion of its organic milk. By way of further response, Safeway affirmatively states that it sells its organic milk with the label "USDA Organic" because it purchases its organic milk from dairies whose products and operations are certified "USDA Organic" by one or more USDA-accredited certifying agents, pursuant to the authority vested in those agents by the USDA under the OFPA and the NOP. Safeway further denies that it "manufactures" the organic milk it sells. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 59.

60. Had Defendant not engaged in the deceptive conduct described above, Plaintiff and the Class Members would not have purchased Safeway's "organic" milk.

**ANSWER:**

Safeway denies having engaged in any "deceptive conduct" whatsoever. Safeway is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 60 regarding Plaintiff's and others' purchasing decisions and, on that basis, denies them. Except as expressly admitted, Safeway denies the remaining

1 allegations in Paragraph 60 and expressly denies that class treatment is appropriate.

2           61. Plaintiff believes that California law should apply nationwide. However, if  
3 California law does not apply, Defendant's deceptive, unconscionable and/or fraudulent  
4 representations and material omissions to consumers and the public, including Plaintiff and the  
5 Class Members, constituted unfair and deceptive acts and practices in violation of the state  
6 consumer protection statutes listed below:

7           a. Defendant has engaged in unfair competition or unfair or deceptive acts or  
8 practices in violation of Ala. Code §§ 8-19-1, *et seq.*;

9           b. Defendant has engaged in unfair competition or unfair or deceptive acts or  
10 practices in violation of Alaska Stat. §§ 45.50471, *et seq.*;

11           c. Defendant has engaged in unfair competition or unfair or deceptive acts or  
12 practices in violation of Ariz. Rev. Stat §§ 44-1522, *et seq.*;

13           d. Defendant has engaged in unfair competition or unfair or deceptive acts or  
14 practices in violation of Ark. Code §§ 4-88-101, *et seq.*;

15           e. Defendant has engaged in unfair competition or unfair or deceptive acts or  
16 practices in violation of Cal. Civ. Code §§ 1770, *et seq.* and Cal Bus. & Prof. Code §§ 17200, *et*  
17 *seq.*;

18           f. Defendant has engaged in unfair competition or unfair or deceptive acts or  
19 practices in violation of Colo. Rev. Stat. §§ 6-1-105, *et seq.*;

20           g. Defendant has engaged in unfair competition or unfair or deceptive acts or  
21 practices in violation of Conn. Gen. Stat. §§ 2-1 10a, *et seq.*;

22           h. Defendant has engaged in unfair competition or unfair or deceptive acts or  
23 practices in violation of 6 Del. Code §§ 2511, *et seq.* and 2531, *et seq.*;

24           i. Defendant has engaged in unfair competition or unfair or deceptive acts or  
25 practices in violation of D.C. Code §§ 28-3901, *et seq.*;

26           j. Defendant has engaged in unfair competition or unfair or deceptive acts or  
27 practices in violation of Fla. Stat. §§ 501.201, *et seq.*;

28           k. Defendant has engaged in unfair competition or unfair or deceptive acts or

1 practices in violation of Ga. Stat. §§ 10-1-372, *et seq.*, 10-1-392 and 10-1-420.

2 l. Defendant has engaged in unfair competition or unfair or deceptive acts or  
3 practices in violation of Haw. Rev. Stat. §§ 480-1, *et seq.*;

4 m. Defendant has engaged in unfair competition or unfair or deceptive acts or  
5 practices in violation of Idaho Code §§ 48-601, *et seq.*;

6 n. Defendant has engaged in unfair competition or unfair or deceptive acts or  
7 practices in violation of 815 ILCS §§ 505/1, *et seq.*;

8 o. Defendant has engaged in unfair competition or unfair or deceptive acts or  
9 practices in violation of Ind. Code Ann. §§ 24-5-0.5-1, *et seq.*;

10 p. Defendant has engaged in unfair competition or unfair or deceptive acts or  
11 practices in violation of Iowa Code §§ 714.16, *et seq.*;

12 q. Defendant has engaged in unfair competition or unfair or deceptive acts or  
13 practices in violation of Kan. Stat. §§ 50-623, *et seq.*;

14 r. Defendant has engaged in unfair competition or unfair or deceptive acts or  
15 practices in violation of Ky. Rev. Stat. §§ 367.170, *et seq.*;

16 s. Defendant has engaged in unfair competition or unfair or deceptive acts or  
17 practices in violation of La. Rev. Stat. §§ 51:1401, *et seq.*;

18 t. Defendant has engaged in unfair competition or unfair or deceptive acts or  
19 practices in violation of 5 Me. Rev. Stat. §§ 205A, *et seq.*;

20 u. Defendant has engaged in unfair competition or unfair or deceptive acts or  
21 practices in violation of Md. Com. Law Code §§ 13-101, *et seq.*;

22 v. Defendant has engaged in unfair competition or unfair or deceptive acts or  
23 practices in violation of Mass. Gen. L. Ch. 93 A, *et seq.*;

24 w. Defendant has engaged in unfair competition or unfair or deceptive acts or  
25 practices in violation of Mich. Comp. Laws Ann. §§ 445.90 1, *et seq.*;

26 x. Defendant has engaged in unfair competition or unfair or deceptive acts or  
27 practices in violation of Minn. Stat. §§ 325D.43, *et seq.*; 325 F.67, *et seq.*; and 325F.68, *et seq.*;

28 y. Defendant has engaged in unfair competition or unfair or deceptive acts or

1 practices in violation of Miss. Code Ann. §§ 75-24-1, *et seq.*;

2 z. Defendant has engaged in unfair competition or unfair or deceptive acts or  
3 practices in violation of Vernon's Ann. Missouri Stat. §§ 407.010, *et seq.*;

4 aa. Defendant has engaged in unfair competition or unfair or deceptive acts or  
5 practices in violation of Mont. Code Ann. §§ 30-14-101, *et seq.*;

6 bb. Defendant has engaged in unfair competition or unfair or deceptive acts or  
7 practices in violation of Neb. Rev. Stat. §§ 59-1601, *et seq.*

8 cc. Defendant has engaged in unfair competition or unfair or deceptive acts or  
9 practices in violation of Nev. Rev. Stat. Ann. §§ 598.0903, *et seq.*;

10 dd. Defendant has engaged in unfair competition or unfair or deceptive acts or  
11 practices in violation of N.H. Rev. Stat. §§ 358-A:1, *et seq.*;

12 ee. Defendant has engaged in unfair competition or unfair or deceptive acts or  
13 practices in violation of N.J. Rev. Stat. §§ 56:8-1, *et seq.*;

14 ff. Defendant has engaged in unfair competition or unfair or deceptive acts or  
15 practices in violation of N.M. Stat. §§ 57-12-1, *et seq.*;

16 gg. Defendant has engaged in unfair competition or unfair or deceptive acts or  
17 practices in violation of N.Y. Gen. Bus. Law §§ 349, *et seq.* and 350-e, *et seq.*;

18 hh. Defendant has engaged in unfair competition or unfair or deceptive acts or  
19 practices in violation of N.C. Gen. Stat. §§ 75-1.1, *et seq.*;

20 ii. Defendant has engaged in unfair competition or unfair or deceptive acts or  
21 practices in violation of N.D. Cent. Code §§ 51-12-01, *et seq.*, and 51-15-01, *et seq.*;

22 jj. Defendant has engaged in unfair competition or unfair or deceptive acts or  
23 practices in violation of Ohio Rev. Stat. §§ 1345.01, *et seq.*;

24 kk. Defendant has engaged in unfair competition or unfair or deceptive acts or  
25 practices in violation of 15 Okla. Stat. §§ 15 751, *et seq.*;

26 ll. Defendant has engaged in unfair competition or unfair or deceptive acts or  
27 practices in violation of Or. Rev. Stat. §§ 646.605, *et seq.*;

28 mm. Defendant has engaged in unfair competition or unfair or deceptive acts or

practices in violation of 73 Pa. Stat. §§ 201-1, *et seq.*;

nn. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of R.I. Gen. Laws. §§ 6-13.1-1, *et seq.*;

oo. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Laws §§ 39-5-10, *et seq.*;

pp. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of S.D. Codified Laws §§ 37-24-1, *et seq.*;

qq. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Tenn. Code §§ 47-18-101, *et seq.*;

rr. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Tex. Bus. & Com. Code §§ 17.41, *et seq.*;

ss. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code §§ 13-11-1, *et seq.*;

tt. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of 9 Vt. §§ 2451, *et seq.*;

uu. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code §§ 59.1-196, *et seq.*;

vv. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wash. Rev. Code. §§ 19.86.0 10, *et seq.*;

ww. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of West Virginia Code §§ 46A-6-101, *et seq.*;

xx. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. §§ 100.20, *et seq.*; and

yy. Defendant has engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. §§ 40-12-101, *et seq.*

**ANSWER:**

Safeway denies that class certification is appropriate and expressly denies that any claims in this action are appropriate for class treatment. Safeway further denies that California

1 law should apply to any proposed nationwide class. Safeway further denies having violated the  
2 consumer protection statute of any state. Except as expressly admitted, Safeway denies the  
3 remaining allegations in Paragraph 61.

4 62. Plaintiff and the Class Members relied upon Defendant's misrepresentations  
5 and/or omissions (as described herein) in purchasing Defendant's "organic" milk.

6 **ANSWER:**

7 Safeway denies having made any "misrepresentations and/or omissions"  
8 whatsoever regarding its organic milk. By way of further response, Safeway affirmatively states  
9 that it sells its organic milk with the label "USDA Organic" because it purchases its organic milk  
10 from dairies whose products and operations are certified "USDA Organic" by one or more  
11 USDA-accredited certifying agents, pursuant to the authority vested in those agents by the  
12 USDA under the OFPA and the NOP. Safeway is without knowledge or information sufficient  
13 to form a belief as to the truth or falsity of the allegations contained in Paragraph 62 regarding on  
14 what Plaintiff or others "relied" and, on that basis, denies them. Except as expressly admitted,  
15 Safeway denies the remaining allegations in Paragraph 62 and expressly denies that class  
16 treatment is appropriate.

17 63. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and  
18 the Class Members have been damaged by, *inter alia*, paying a premium price for "organic"  
19 milk, when Plaintiff and the Class Members received non-organic milk.

20 **ANSWER:**

21 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,  
22 including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly  
23 admitted, Safeway denies the remaining allegations in Paragraph 63 and expressly denies that  
24 class treatment is appropriate.

25 64. As a direct and proximate result of Defendant's wrongful conduct, Plaintiff and  
26 the Class are entitled to compensatory damages, treble damages, attorneys' fees and cost of this  
27 suit.  
28

**ANSWER:**

Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 64 and expressly denies that class treatment is appropriate.

**SIXTH CAUSE OF ACTION**  
**COMMON LAW UNJUST ENRICHMENT**

65. This Cause of Action is pled in the alternative to all contract-based claims and/or causes of action at law.

**ANSWER:**

Safeway admits that Plaintiff purports to plead his claim for unjust enrichment in the alternative. Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 65.

66. Defendant has received a benefit from Plaintiff and the Class Members in the form of the prices Plaintiff and the Class Members paid for Defendant's "organic" milk or milk products during the relevant time period.

**ANSWER:**

Safeway denies the allegations in Paragraph 66 and expressly denies that class treatment is appropriate.

67. Defendant is aware of its receipt of the above-described benefit.

**ANSWER:**

Safeway denies the allegations in Paragraph 67.

68. Defendant received the above-described benefit to the detriment of Plaintiff and each of the other members of the Class.

**ANSWER:**

Safeway denies the allegations in Paragraph 68 and expressly denies that class treatment is appropriate.

69. Defendant continues to retain the above-described benefit to the detriment of Plaintiff and the Class Members.

**ANSWER:**

Safeway denies the allegations in Paragraph 69 and expressly denies that class treatment is appropriate.

70. Under the circumstances, it would be inequitable for Defendant to retain the above described benefit.

**ANSWER:**

Safeway denies the allegations in Paragraph 70 and expressly denies that class treatment is appropriate.

71. As a result of Defendant's unjust enrichment, Plaintiff and the Class Members have sustained damages in an amount to be determined at trial and seek full disgorgement and restitution of Defendant's enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful or wrongful conduct alleged above.

**ANSWER:**

Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever, including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly admitted, Safeway denies the remaining allegations in Paragraph 71 and expressly denies that class treatment is appropriate.

**SEVENTH CAUSE OF ACTION**  
**BREACH OF EXPRESS WARRANTY**

72. Plaintiff hereby incorporates the preceding paragraphs by reference.

**ANSWER:**

Safeway repeats and realleges its answers to the preceding paragraphs as if fully set forth herein.

73. Aurora sold its "organic" milk or milk products to retailers who sold that milk or milk products to Plaintiff and the Class Members.

1 **ANSWER:**

2           Safeway does not answer for Aurora, who has not been named in this action.  
3 Safeway admits that some, but not all, of the organic milk that it sells is supplied by Aurora.  
4 Safeway further admits that it sells its organic milk with the “USDA Organic” seal, because it  
5 purchases its organic milk from dairies whose products and operations are certified “USDA  
6 Organic” by one or more USDA-accredited certifying agents, pursuant to the authority vested in  
7 those agents by the USDA under the OFPA and the NOP. Safeway is without knowledge or  
8 information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 73  
9 regarding Plaintiff, the proposed class members and Aurora’s customers and, on that basis,  
10 denies them. Except as expressly admitted, Safeway denies the remaining allegations in  
11 Paragraph 73 and expressly denies that class treatment is appropriate.

12           74. At all times relevant to this action, Defendant falsely represented that its milk or  
13 milk products were “organic” when they were not produced in compliance with the applicable  
14 organic certification requirements, laws, standards and regulations.

15 **ANSWER:**

16           Safeway denies the allegations in Paragraph 74.

17           75. By its statements and representations about the “organic” status of its milk or milk  
18 products, Defendant warranted the production process and condition of that “organic” milk or  
19 milk products purchased by Plaintiff and the Class Members.

20 **ANSWER:**

21           Safeway denies the allegations in Paragraph 75 and expressly denies that class  
22 treatment is appropriate.

23           76. Defendant made these representations and warranty statements to induce Plaintiff  
24 and the Class Members to purchase Defendant’s “organic” milk or milk products or was a  
25 material factor in the decision of Plaintiff and the Class Members to purchase the milk or the  
26 milk products.

27 **ANSWER:**

28           Safeway denies the allegations in Paragraph 76 and expressly denies that class

1 treatment is appropriate.

2 77. Due to its conduct alleged herein, Defendant's "organic" milk or milk products  
3 failed to conform to each of these warranties.

4 **ANSWER:**

5 Safeway denies the allegations in Paragraph 77.

6 78. As a result of Defendant's conduct, Plaintiff and the Class Members have been  
7 damaged.

8 **ANSWER:**

9 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,  
10 including, but not limited to, the relief requested in Plaintiff's Complaint. Except as expressly  
11 admitted, Safeway denies the remaining allegations in Paragraph 78 and expressly denies that  
12 class treatment is appropriate.

13 79. Within a reasonable time after Plaintiff and the Class Members knew or should  
14 have known of the failure to conform, Plaintiff, individually and on behalf of the Class, placed  
15 Defendant on notice thereof.

16 **ANSWER:**

17 Safeway denies the allegations in Paragraph 79 and expressly denies that class  
18 treatment is appropriate.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually and on behalf all others similarly situated,  
21 respectfully requests that this Court enter a judgment against Defendant and in favor of Plaintiff,  
22 and grant the following relief:

23 A. Determine that this action may be maintained as a class action with respect to a  
24 national class or with subclasses corresponding to the several states' laws, or, in the alternative, a  
25 California statewide class, pursuant to the appropriate subsections of Fed. R. Civ. P. 23; that the  
26 court certify a class action with respect to particular issues if appropriate, and that the Court  
27 designate and appoint Plaintiff and his counsel to serve as Class Representative and Class  
28 Counsel;

1 B. Declare, adjudge and decree the conduct of the Defendant as alleged herein to be  
2 unlawful;

3 C. Grant Plaintiff and all Class Members awards of actual, compensatory, punitive  
4 and/or exemplary damages in such amount to be determined at trial and as provided by  
5 applicable law;

6 D. Grant Plaintiff and all Class Members awards of statutory, damages, attorney's  
7 fees and costs pursuant to the various Consumer Protection Acts of the fifty states;

8 E. Grant Plaintiff and the Class Members their costs of suit, including reasonable  
9 attorneys' fees, and expenses as provided by law; and

10 F. Grant Plaintiff and the Class Members such other, further, and different relief as  
11 the nature of the case may require or as may be determined to be just, equitable, and proper by  
12 this Court.

13 **ANSWER:**

14 Safeway denies that Plaintiff, or anyone else, is entitled to any relief whatsoever,  
15 including, but not limited to, the relief requested in Plaintiff's Complaint. Safeway further  
16 denies that class certification is appropriate and expressly denies that any claims in this action  
17 are appropriate for class treatment. Except as expressly admitted, Safeway denies the remaining  
18 allegations in the Paragraph entitled "Prayer for Relief."

19 **DEMAND FOR TRIAL BY JURY**

20 Plaintiff, by counsel, requests a trial by jury on those causes of actions set forth  
21 herein.

22 **ANSWER:**

23 Safeway admits that Plaintiff purports to seek a jury trial for the causes of action  
24 in Plaintiff's Complaint. Except as expressly admitted, Safeway denies the remaining allegations  
25 in the Paragraph entitled "Demand for Trial by Jury."

26 **FIRST AFFIRMATIVE DEFENSE**

27 1. The Complaint fails to state any claim upon which relief can be granted.  
28

**SECOND AFFIRMATIVE DEFENSE**

2. The claims of Plaintiff and members of the proposed class for equitable relief are barred by the fact that Plaintiff and the members of the proposed class have an adequate remedy at law.

**THIRD AFFIRMATIVE DEFENSE**

3. The claims asserted are barred, in whole or in part, to the extent that Plaintiff and/or members of the proposed class suffered no legal injury.

**FOURTH AFFIRMATIVE DEFENSE**

4. The claims of Plaintiff and/or members of the proposed class may be barred, in whole or in part, by the doctrines of waiver, estoppel and/or laches.

**FIFTH AFFIRMATIVE DEFENSE**

5. Plaintiff and members of the proposed class may be barred, in whole or in part, from recovery because they have made statements and/or taken actions that estop them from asserting their claims.

**SIXTH AFFIRMATIVE DEFENSE**

6. The claims of Plaintiff and/or members of the proposed class may be barred, in whole or in part, by the applicable statutes of limitations.

**SEVENTH AFFIRMATIVE DEFENSE**

7. The claims in Plaintiff's Complaint are barred, in whole or in part, because Plaintiff and members of the proposed class cannot meet their burden of showing that any acts, conduct, statements or omissions on the part of Safeway were misleading or likely to mislead.

**EIGHTH AFFIRMATIVE DEFENSE**

8. The claims in Plaintiff's Complaint are barred, in whole or in part, because Plaintiff and members of the proposed class were not actually misled or deceived by and/or did not rely on any statements or omissions on the part of Safeway in deciding whether to purchase the organic milk sold by Safeway.

**NINTH AFFIRMATIVE DEFENSE**

9. Plaintiff's Complaint is barred, in whole or in part, by the Supremacy Clause of the United States Constitution and by the doctrine of preemption. Allowing state law to override or alter the decisions of the USDA and the requirements of the OFPA and the NOP regulations conflicts with both Federal law and the policies underlying Federal law and would stand as an obstacle to the Federal objective of creating unified organic food standards throughout the United States.

**TENTH AFFIRMATIVE DEFENSE**

10. The claims in Plaintiff's Complaint are barred, in whole or in part, because the USDA has primary jurisdiction over all or part of the subject matter hereto.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. If any persons or entities claiming to be members of the proposed class have released claims, they may be barred from recovery, in whole or in part, by such releases.

**TWELFTH AFFIRMATIVE DEFENSE**

12. The claims of Plaintiff and members of the proposed class may be barred, in whole or in part, to the extent that they may have failed to mitigate damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. Plaintiff and/or members of the proposed class may be barred from recovery, in whole or in part, if in this or other tribunals they have brought actions and have received judgments or awards on some or all claims asserted herein.

**FOURTEENTH AFFIRMATIVE DEFENSE**

14. If any persons claiming to be members of the proposed class have resolved the same or similar claims as those alleged in Plaintiff's Complaint, they may be barred from recovery, in whole or in part, on the ground that they are subject to the defense of accord and satisfaction.

**FIFTEENTH AFFIRMATIVE DEFENSE**

15. The claims of Plaintiff and/or the members of the proposed class are barred, in whole or in part, to the extent that they engaged in unlawful, inequitable or improper conduct.

**SIXTEENTH AFFIRMATIVE DEFENSE**

16. The claims of Plaintiff and/or the members of the proposed class are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

17. The claims of Plaintiff and/or the members of the proposed class are barred, in whole or in part, because Plaintiff and members of the proposed class failed to exhaust administrative remedies.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. The claims of Plaintiff are barred, in whole or in part, because Safeway purchased organic milk from dairies that complied with the applicable federal laws and regulations governing the production, marketing, labeling and sale of organic foods and were certified by a Federal agency to label their products "USDA Organic."

**NINETEENTH AFFIRMATIVE DEFENSE**  
**(AGAINST PROPOSED CALIFORNIA "STATEWIDE CLASS")**

19. The claims of any proposed "California State Class" in the Complaint are barred, in whole or in part, by the doctrine set forth in Diaz v. Kay-Dix Ranch, 9 Cal. App. 3d 588 (1970).

**TWENTIETH AFFIRMATIVE DEFENSE**  
**(AGAINST PROPOSED CALIFORNIA "STATEWIDE CLASS")**

20. The claims of any proposed "California State Class" in the Complaint are barred, in whole or in part, by the doctrine set forth in Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163 (1999).

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. The claims of Plaintiff and members of the proposed class for punitive damages are barred, in whole or in part, by applicable state law and the Constitution of the United States.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

22. Plaintiff's action cannot be maintained as a class action because Plaintiff cannot meet the requirements for class certification. Further, certification of the proposed class would result in the denial of due process to Safeway, as well as to the proposed class.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

23. This action is not appropriate for class treatment because the claims necessarily turn on individual purchasing habits and patterns for each Plaintiff and proposed class member.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

24. Plaintiff's claims for violation of the various state consumer protection statutes are barred, in whole or in part, by the "safe harbor" provisions of those consumer protection statutes and/or the respective states' common law "safe harbor" provisions.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25. Plaintiff and his counsel have failed to join as parties to this action all persons and entities that would be necessary parties for adjudication of the claims of Plaintiff and/or members of the proposed class.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE  
(AGAINST PROPOSED CALIFORNIA "STATEWIDE CLASS")**

26. Plaintiff's claims for damages under the Consumer Legal Remedies Act are defective, since no statutorily-required notice was served upon Safeway thirty days prior to the filing of suit as required by Cal. Civ. Code § 1782(a).

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27. The claims of Plaintiff and members of the proposed class are barred, in whole or in part, by the doctrine set forth in Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985), as applying California law to a nationwide class would, inter alia, violate due process.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE  
(AGAINST PROPOSED CALIFORNIA "STATEWIDE CLASS")**

28. The claims of any proposed "California State Class" in the Complaint are barred, in whole or in part, because the California Department of Health Services and/or the California Department of Food and Agriculture have primary jurisdiction over all or part of the subject

1 matter hereto.

2 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

3 29. The claims of the members of the proposed class are barred, in whole or in part,  
4 by the restriction on class action lawsuits in the various states' consumer protection statutes,  
5 including, but not limited to, Ala. Code § 8-19-10(f); Ga. Code. Ann. § 10-1-399(a); La. Rev.  
6 Stat. Ann. § 51:1409(a); Miss. Code § 75-24-15(4); Mont. Code § 30-14-133(1); S.C. Code § 37-  
7 5-202(1), (3).

8 **THIRTIETH AFFIRMATIVE DEFENSE**

9 30. Plaintiff's claims for damages under one or more of the consumer protection acts  
10 are defective, since no statutorily-required notice was served upon Safeway prior to the filing of  
11 suit. See Ala. Code § 8-19-10(e) (requiring 15 days); Ak. Stat. § 45.50.535 (requiring notice  
12 generally); Cal. Civ. Code § 1782(a) (requiring 30 days); Ga. Code Ann. § 10-1-399(b)  
13 (requiring 30 days); Ind. Code § 24-5-0.5-5(a) (requiring 30 days); Me. Rev. Stat. Ann. Tit. 5, §  
14 213(1-A) (requiring 30 days); Mass. Gen. Laws Ch. 93A § 9(3) (requiring 30 days); Tex. Bus. &  
15 Com. Code § 17.505 (requiring 60 days); W. Va. Code § 46A-6-106 (requiring 20 days); Wyo.  
16 Stat. Ann. § 40-12-109 (requiring notice generally and imposing a statute of limitations).

17 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

18 31. Safeway has insufficient knowledge or information upon which to form a belief as  
19 to whether it may have additional affirmative defenses that govern the claims asserted by  
20 Plaintiff and on behalf of persons claimed to be members of the proposed class. Safeway,  
21 therefore, reserves the right to raise additional defenses as appropriate.

22 WHEREFORE, Safeway prays:

- 23 (a) That Plaintiff and all members of the proposed class take nothing  
24 by reason of this suit;
- 25 (b) For attorneys fees and costs;
- 26 (c) That the certification of all proposed classes herein be denied; and
- 27 (d) For any other and further relief as the Court deems just and proper.
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Dated: February 19, 2008

Respectfully submitted,

/s/  
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